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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
087716,223	11/22/96	VAN SCHOUWENBURG	961170

RICHARD L BYRNE
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH PA 15219-1818

A3M1/0209

EXAMINER	
SHERRER, C	
ART UNIT	PAPER NUMBER
1302	10

DATE MAILED: 02/09/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

C7
2/9/98



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OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/30/97

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1 and 3-22 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1 and 3-22 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Part III DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification makes no mention of combining the several methods of forming a coherent piece of meat, i.e., using acids and heat or acids and forcemeat. Nor does the specification provide basis for both tumbling and massaging (Claim 7).

Claim Objections

3. Claim 12 is objected to because of the following informalities: the phrase "common salt" should be replaced with the phrase --sodium chloride--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 3, 4, 6, 8, 13 to 17 , 19 and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claims 3 to 6, 8, 13 to 17 and 19 to 22 are rejected because they depend from canceled Claim 2. They have been treated as if they depend from Claim 1.
6. Claim 3 is considered indefinite because it is unclear if “the interface” is that found between the layer of solubilized proteins and the small piece of meat or between the two layers of solubilized proteins. There is no antecedent basis for “the interface.”
7. Claim 4 is indefinite because it is unclear how one would determine if the acid has affected the taste of the so processed meat.
8. Claim 6 is considered indefinite because there is no antecedent basis for the phrase “the temperature increase.”
9. Claim 8 is considered indefinite because it is not seen how massaging can take place in a rotating drum.
10. Claim 13 is considered indefinite because the claimed cooling target temperature of 45C is above the minimum heating temperature of 40C and it is unclear if the forced cooling must be performed at heating temperatures between 40C to lower than about 45C.
11. Claims 5 , 14, 21 and 22 are considered indefinite because Claim 1 does not positively recite a step where selective denaturation and coagulation occur.

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12. Claim 17 is considered indefinite because the scope of the phrase "the texture of thinly cut red meat" is unknown.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1, 3 to 7 and 9 to 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Weiner (U.S. Pat. No. 3,740,235) in view of Bauer et al. (Abstract of German Pat. No. 1,692,110).

15. Weiner teach a method of forming a beef loaf. Specifically, chunks of meat are mixed with "relatively finely ground beef" as a binding agent, salt, and heated to a range of 80-120F, followed by rapid chilling (col. 2, lines 44 to 54). Wiener does not teach that the binding agent can be comprised of an acid.

16. Bauer et al. teach a sausage emulsion additive which is heated that includes a non-toxic organic acid along with certain metal phosphates.

17. It would have been obvious to one of ordinary skill in the art to use the emulsion additive of Bauer et al in the meat composition of Wiener et al since to obtain the expected results of

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binding the meat pieces. While neither reference teaches a drop in pH or the selective denaturing of the proteins, these are inherent results from the use of acids.

18. As to the heating speed recited in Claim 6, it is considered that the 0.1 deg/sec (6 deg/min) is typical of most meat heating regimes and further that it is well within the skill of those in the art to determine the optimum heating rate based on economics or binding effects.

19. Finally, Applicants' attention is invited to *In re Levin*, 84 U.S.P.Q. 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 U.S.P.Q. 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 U.S.P.Q. 221.

20. Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Weiner (U.S. Pat. No. 3,740,235) in view of Bauer et al. (Abstract of German Pat. No. 1,692,110) and in further view of Gould (U.S. Pat. No. 4,517,888).

21. Neither Weiner nor Bauer et al teach the use of a rotary drum to mix the ingredients. While it is considered that this is an old well known mixing apparatus and therefore obvious, the following reference is cited to display the obviousness of its use.

22. Gould teaches the use of a rotating drum for tumbling meat. See col. 1, lines 33 to 53). It would have been obvious to those of ordinary skill in the art to use the mixer of Gould for the process of Wiener in view of Bauer et al because it is commonly used for processing meats.

Response to Arguments

23. Applicant's arguments with respect to claims 1 and 3 to 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

24. No claim is allowed.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Monday through Friday from 6:00 to 2:30.


26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax phone number for this Group is (703)-305-3602.

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27. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curtis E. Sherrer

February 2, 1998